



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG - 9 2008

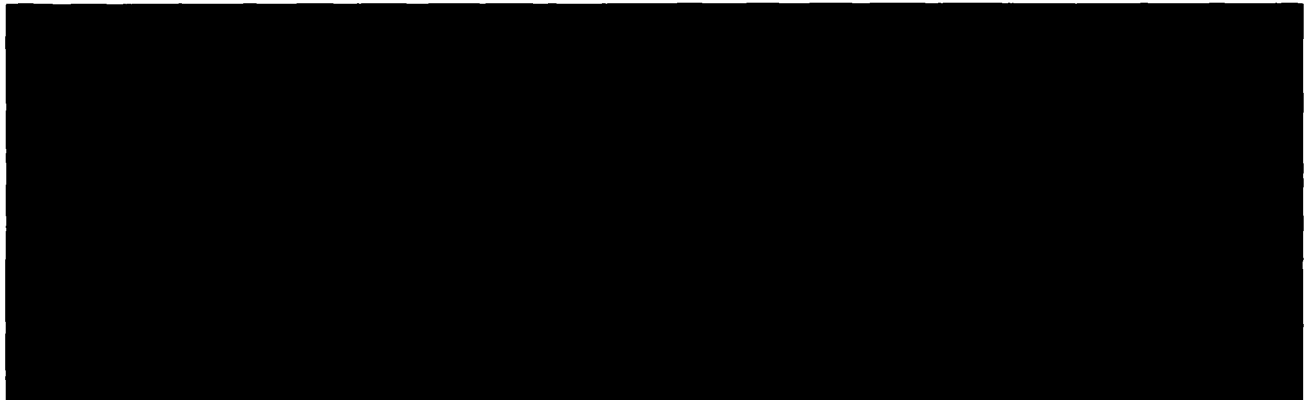
**Loyce Bell, Treasurer
Kalyn Free for Congress
406 Boulder, Suite 200
Tulsa, Oklahoma 74103**

**MUR 5787
Kalyn For Congress and
Loyce Bell, in her official capacity
as treasurer**

Dear Ms. Bell:

On August 4, 2006, the Federal Election Commission found that there is reason to believe Kalyn Free for Congress and you, as treasurer, violated 2 U.S.C. § 434(b)(2), (3) and (8) and 2 U.S.C. § 439a(b)(1), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office, along with the other information requested below within 30 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.



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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.


Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Delbert K. Rigby, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

cc: Kalyn Free

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Kalyn Free for Congress and
Loyce Bell, in her official
capacity as treasurer

MUR: 5787

I. INTRODUCTION

This matter was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. This matter concerns the personal use of campaign funds by Kalyn Free, a candidate for U.S. Congress in Oklahoma in 2004, which were paid to her as "salary" by her 2004 authorized committee, Kalyn Free for Congress, after Ms. Free lost the primary election. This matter also concerns the Committee's reporting of various receipts and debt relating to the salary payments, the expense payments Ms. Free claimed she advanced, and the refunds she made to the Committee. For the reasons set forth below, the Commission finds reason to believe that Kalyn Free for Congress and Loyce Bell, in her official capacity as treasurer ("Committee"), violated 2 U.S.C. § 439a(b)(1) and 2 U.S.C. § 434(b)(2), (3) and (8).

II. FACTUAL SUMMARY

On Schedule B of its original 2004 October Quarterly Report, the Committee reported, as "salary," payments to Kalyn Free on September 29, 2004 in amounts of \$35,000 and \$15,000. The Committee made these payments approximately two months after Ms. Free lost her 2004 primary election in Oklahoma, which occurred on July 27, 2004. On Schedule D of the report, the Committee reported debt incurred in the amount of \$50,000 to Kalyn Free, also described as "salary," and its corresponding payment to Ms. Free during the reporting period.

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On February 24, 2005, the Commission's Reports Analysis Division (RAD) sent a Request for Additional Information (RFAI) to the Committee, noting, among other things, "if a candidate loses in the primary election and is not participating in the general election, they may not continue to receive payments after the date of the primary," and that salary payments made to the candidate after the July 27, 2004 primary constitute a personal use of campaign funds. The RFAI requested that the Committee seek reimbursement from the candidate for the full amount of the personal use violations and notify the Commission of the reimbursement.

In regard to the RFAI, on March 28, 2005, the Committee filed a miscellaneous statement indicating that the Committee had been unaware that a candidate could only begin to accrue salary at the end of the ballot qualification period, which in Ms. Free's case, was June 9, 2004. According to the Committee, Kalyn Free believed that salary could begin to accrue when she filed her statement of candidacy, which was filed in October 2003. However, the Committee indicated that if salary payments were appropriate only between the ballot qualification deadline of June 9, 2004 and the primary election date of July 27, 2004, Ms. Free was entitled to \$21,000.¹ The Committee stated that "[u]pon further review of Ms. Free's records, it has been determined that" approximately \$14,659 "in unreimbursed expenses were never received by Ms. Free." Netting the excess salary payments of \$29,000 (\$50,000 - \$21,000) with the amount purportedly owed to Ms. Free (\$14,659) left a balance owed by Ms. Free to the Committee of \$14,341, which

¹ According to the Committee, since Ms. Free earned "far in excess of what a member of Congress earned in 2003," she was entitled to a pro-rata salary for the 7 week period based on the annualized rate of pay to a member of Congress of \$156,000.

the Committee indicated she would refund when funds became available.²

On March 28, 2005, the Committee also amended its 2004 October Quarterly Report to reflect a disbursement of \$35,000 for "salary" and a disbursement of \$15,000 for "salary overpayment." Additionally, on Schedule D, the Committee reported that Ms. Free owed \$14,341 to the Committee for "overpayment on salary." The Schedule D also reflected a Committee debt of \$21,000 to Ms. Free for "salary," a payment of \$35,000 on that debt and an outstanding negative balance of \$14,000.

Thereafter, a RAD analyst left messages for the Committee's treasurer and the candidate concerning the salary payments, indicating that there was an outstanding issue on the 2004 October Quarterly Report. In two telephone calls with the Committee's Finance Director, RAD personnel informed the Committee that its response to the February 24, 2005 RFAI was incomplete because it had not amended its reports to disclose the Committee's alleged debt to Ms. Free for unpaid expenses nor provided any evidence that the Committee's obligation to pay Ms. Free a salary existed prior to July 27, 2004, the date of the primary election. In response, on June 2, 2005, the Committee filed a miscellaneous statement in which Dave Parker, the former Campaign Manager of the Committee, asserted that it was always the Committee's intention to pay Ms. Free a salary of \$50,000 based upon an oral agreement in May 2004 between himself and Ms. Free. Mr. Parker stated that Ms. Free had agreed to defer payment of her salary until the end of the campaign to ensure that all campaign bills and staff were paid. Mr. Parker also noted that because of the Commission's interpretation of the law, the salary payment had been reduced

² The Committee stated that "due to the costs of the campaign, the lack of income during 2004, as well as the fact that Ms. Free made a deposit of \$21,644.50 with the Internal Revenue Service and Oklahoma Tax Commission subsequent to the \$50,000 payment for anticipated salary, Ms. Free is unable to return the funds at this time. However, once Ms. Free receives her tax refund from the IRS, she will promptly repay her campaign the monies due."

to \$21,000. Finally, he noted that Ms. Free had made a \$4,000 payment on May 31, 2005, leaving her remaining debt amounting to \$10,341.

On July 15, 2005, the Committee filed its 2005 July Quarterly Report disclosing a receipt of \$4,000 from Kalyn Free on May 31, 2005 without describing the nature of the receipt. On Schedule D of this report, the Committee reported an outstanding debt of \$14,341 due from Ms. Free, with no payments being made on the debt during the period. The debt was described as "overpayment on salary." RAD sent the Committee an RFAI regarding its 2005 July Quarterly Report questioning whether the debt balance at the close of the period should be \$10,341 to reflect the payment of \$4,000.

On October 15, 2005, the Committee filed its 2005 October Quarterly Report, which reported on Schedule A several receipts between August 1, 2005 and September 25, 2005 from Ms. Free totaling \$10,341. On Schedule D of this report, the Committee showed Ms. Free's debt as \$10,341 at the beginning of the reporting period, the payment of \$10,341 during the reporting period and an outstanding balance of zero.

On the same day it filed its 2005 October Quarterly Report, the Committee filed an amendment to its 2004 October Quarterly Report. The amendment contained several memo entries on Schedule B. The first entry was a \$50,000 disbursement to Ms. Free on September 29, 2004 that contained the description "payment see below," which referred to the additional memo entries immediately following that described a disbursement of \$21,000 in salary to Ms. Free, a disbursement of \$14,659 to Ms. Free for miscellaneous expenses, and a disbursement of \$14,341 to Ms. Free for overpayment of salary. On Schedule D of the report, the Committee included memo entries showing a debt of \$14,341 owed to the Committee by Ms. Free, a debt of \$21,000 incurred by the Committee to Ms. Free for salary during this period that was also paid during this

period, and a debt of \$14,659 incurred to Ms. Free during this period for miscellaneous expenses that was paid during this period.³

III. LEGAL ANALYSIS

A. Personal Use

A contribution accepted by a candidate may be used by the candidate for otherwise authorized expenditures in connection with the campaign for federal office of the candidate. See 2 U.S.C. § 439a(a)(1). However, a contribution or donation described in 2 U.S.C. § 439a(a) shall not be converted by any person to personal use. 2 U.S.C. § 439a(b)(1). "Personal use" means any use of funds in a campaign account of a present or future candidate to fulfill a commitment, obligation, or expense of any person that would exist irrespective of the candidate's campaign or duties as a federal officeholder. 11 C.F.R. § 113.1(g).

A candidate's principal campaign committee may pay a salary to a candidate in accordance with 11 C.F.R. § 113.1(g)(1)(i)(I). A candidate may receive salary payments that do not exceed the lesser of the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks or the earned income that the candidate received during the year prior to becoming a candidate, but any earned income that a candidate receives from salaries or wages from any other source shall count against the minimum salary paid to a Federal officeholder holding the seat sought by the candidate. Upon request of the Commission, the candidate must provide evidence of earned income. *Id.* Moreover, the committee shall not pay salary to a candidate before the filing deadline for access to the primary election ballot for the

³ The Committee filed a final amendment to its 2004 October Quarterly Report on December 2, 2005, in response to an RFAI requesting an explanation of the change in the amount of debt disclosed on the amended report dated October 15, 2005 from the amount listed on the original report. With the amended report, the Committee provided a narrative statement concerning reporting mistakes involving Ms. Free's salary payments and debt and its various efforts to correct them.

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Federal office that the candidate seeks, as determined by state law. *Id.* During the time period in which a principal campaign committee may pay a salary to a candidate, such payment must be computed on a pro-rata basis. *See id.* If the candidate loses the primary, withdraws from the race, or otherwise ceases to be a candidate, the committee may not pay salary to the candidate beyond the date he or she is no longer a candidate. *Id.*

The Committee made \$50,000 in salary payments to Ms. Free on September 29, 2004, at least \$29,000 of which was admittedly in excess of the amount she was eligible to receive, no matter when the payment was made. Because Ms. Free lost the primary election, she was not entitled to any payments for any time period after the primary election ended. RAD advised the Committee that it had not amended reports to show a debt owing to Ms. Free nor provided any evidence that a debt to her existed prior to July 27, 2004. In response, the Committee stated that there was an oral agreement in May 2004 between then campaign manager, Dave Parker and Kalyn Free to compensate Ms. Free with a salary of \$50,000, payment of which was to be deferred until the end of her campaign, but did not provide any further evidence, such as affidavits from both Mr. Parker and Ms. Free, attesting to the oral agreement and documenting that, based on her 2003 income, she was entitled to a pro-rata salary based on the salary of a member of Congress in 2004. Moreover, the Committee did not originally include, or amend its 2004 12 Day Pre-Primary Report, to reflect the purported May 2004 salary arrangement as debt owed to the candidate. Once advised that the Committee had overpaid Ms. Free from campaign funds, Ms. Free did not fully reimburse the Committee until September 25, 2005, approximately seven months thereafter, at which time she had the personal use of a portion of campaign funds for approximately a year.

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Therefore, there is reason to believe that Kalyn Free for Congress and Loyce Bell, in her official capacity as treasurer, violated 2 U.S.C. § 439a(b)(1).

B. Reporting

Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with 2 U.S.C. § 434(a) and must comply with the requirements of 2 U.S.C. § 434(b)(2) and (3). The treasurer must also report the amount and nature of outstanding debts and obligations owed by or to such political committee. 2 U.S.C. § 434(b)(8).

In addition to reporting erroneous and confusing entries relating to the salary overpayments, the Committee failed to report any debt incurred to Ms. Free for a salary, arising from the purported May 2004 oral agreement, on its Pre-Primary Report, which covered April 1, 2004 through July 7, 2004. By not reporting any such debt on that report, the public was not notified that the Committee had agreed to pay the candidate a salary until after the primary election was over. Moreover, the Committee has never amended its 2004 12 Day Pre-Primary Report to reflect any such debt.

Furthermore, the Committee contends that they owed \$14,659 to Ms. Free for Committee expenses paid by Ms. Free that were to be reimbursed. Although candidates may make unlimited contributions to their own campaigns, 11 C.F.R. § 110.10(a), including advances, the contributions must be properly reported. See 2 U.S.C. § 434(b)(3) (authorized committees must identify persons who make contributions during the reporting period, whose contribution(s) have an aggregate amount in excess of \$200 within the election cycle). If candidates make contributions that they intend to be advances, their committees should report the contributions in memo entries on Schedule A as in-kind contributions, identify them as "advances," and continuously report them on Schedule D until repaid. See 11 C.F.R. § 116.5(b) and (c). See also

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11 C.F.R. § 104.11 (debts exceeding \$500 or debts of any amount that have been outstanding for more than 60 days must be reported on Schedule D). Certain travel and subsistence expenditures do not have to be reported as contributions if payment is made with a credit card and is reimbursed within 60 days of the closing date of the billing statement on which the charges appear. 11 C.F.R. § 116.5(b)(2). However, those travel and subsistence expenses must be reported as expenditures. See 2 U.S.C. § 434(b)(4)(A). Otherwise, advances for travel and subsistence expenses are in-kind contributions, and reported the same way as other advances.

In this instance, the Committee did not report as in-kind contributions any of the \$14,659 it later claimed it owed Ms. Free, and only reported that amount as debt after RAD questioned it about the \$50,000 in salary payments to the candidate. If the Committee intended to reimburse Ms. Free for these expenses, it should have identified them as advances in memo entries on Schedule A of its disclosure reports when the advances were made. Additionally, pursuant to 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 116.5(c), the Committee should have continuously reported on Schedule D of its reports, as debt until it was repaid, its obligation to reimburse Ms. Free for these advances.

Had the advances been properly reported at the outset, the Committee's repayment to Ms. Free should have referenced the original Schedule A memo entries to which the reimbursements related, *see* Advisory Opinion 1992-1, and shown the corresponding reduction in debt owed to the Committee. When the Committee amended its 2004 October Quarterly Report on October 15, 2005, it listed a disbursement to Kalyn Free for \$14,659 on September 29, 2004, which suggests that all the expenditures were made during that reporting period. However, subsequently, in a narrative statement included with the amended 2004 October Quarterly Report dated December 2, 2005, the Committee said that Ms. Free made out-of-pocket expenses dating

back to October 17, 2003. The Committee also stated that this amended report itemized the expenses incurred by Ms. Free that were in excess of \$200. However, the amended report showed a single disbursement of \$470 to Ms. Free on September 29, 2004 with the purpose of the disbursement described as "travel reimbursement," indicating that the remainder of the \$14,189 in reimbursed expenses were all for amounts of \$200 or less. However, the Committee had an obligation to itemize all contributions aggregating in excess of \$200 within the election cycle. 2 U.S.C. § 434(b)(3).

Therefore, there is reason to believe that Kalyn Free for Congress and Loyce Bell, in her capacity as treasurer, violated 2 U.S.C. § 434(b)(2), (3) and (8).